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Reply To:
Jeffrey L. Rubinger
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January 19, 2004

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capital Heights, MD 20743

Re: **Radiant Telecom, Inc.**
Filer ID 822268
0007-2523-07
03US000028
Docket #96-45

Dear Sir or Madam:

This letter is an appeal to the "Administrator's Decision" (the "Decision") (a copy of which is attached as Exhibit A) dated December 19, 2003, from the Universal Service Administrative Company ("USAC") to the above-referenced entity. According to the Decision, the USAC does not have the authority to determine whether voice-over IP telephony services ("VOIP") are telecommunications services for the purposes of determining whether Radiant Telecom, Inc. ("Radiant") is liable for unpaid contributions to the Universal Service Fund ("USF").


This Decision was issued in response to Radiant's appeal (a copy of which is attached as Exhibit B) of a "Final Demand and Notice of Debt Transfer" (the "Notice") issued by the FCC on September 6, 2003 (a copy of which is attached as Exhibit C). According to the FCC, Radiant is liable for unpaid USF contributions, including administrative charges, in the amount of \$1,662,366.18.

For the reasons set forth below, we believe that Radiant is not liable for unpaid USF contributions, and therefore, we are appealing the Decision issued by the USAC.

I. Radiant in General.

Radiant is a telecommunications company with headquarters located in Miami, Florida. Radiant derives all or substantially all of its revenues from voice-over IP telephony. In other words, as opposed to traditional telephone companies, which use circuit-switched technology, Radiant uses internet protocol ("IP") telephony or "packet switching," a process of breaking down data into packets of digital bits and transmitting them over the Internet.

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This is accomplished by having customers dial up a gateway switch, which receives standard analog circuit-switched (*i.e.*, TDM) phone calls and processes it via a voice data access concentrator ("VDAC") motherboard. The VDAC provides distributed processing between media processing resources, the TDM and the voice-over IP ("VOIP") packet switching control.

The VOIP packets travel through the internet until they reach the digital destination encoded in its header information. Radiant's responsibility in this process is to convert the analog signals to digital data, move the data over the internet, and then transform the data back into an analog signal so that the receiving telephone (or fax machine) can terminate the communications as an analog signal. Radiant pays the network operators at either end of the network for access to their network facilities

Additionally, the services that Radiant offers with regards to the prepaid application is as follows: (i) the customer dials a toll-free 800 or local access number from his phone; (ii) the call reaches the local central office, which then is forwarded by the underlying carrier to the Radiant gateways; (iii) Gateway controllers authorize and record the customer's access to the system through a series of lookups in the database; (iv) based on the dialed destination number, the database directs the gateway controller to route the call to the appropriate terminating gateway; (v) the database then informs the terminating gateway of the routed call and the incoming call is received by the terminating gateway; (vi) all activities including those on local phone lines, internet servers, internet access circuits, etc. are monitored by a network operating center; (vii) once the call reaches the terminating gateway, it is sent over the local telephone network to the called number; and (viii) the called party answers the call.

All call routing between the originating and the terminating gateways and the database lookups to control the routing and directing the traffic are done as VOIP. The originating gateway packetizes the call to be delivered on the IP network and the terminating gateway unpacketizes the same call before sending it over local public switched telephone network ("PSTN") lines to the local carrier.

II. Current Status of the Law.

In general, every "telecommunications carrier that provides interstate telecommunications services is required to contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service (*i.e.*, the Universal Service Fund)."¹ A telecommunication carrier is defined as an entity that provides interstate "telecommunications" to the public, or to such classes of users as to be effectively available to the public, for a fee.² The term "telecommunications" is

¹ 47 USC §254(d).

² 47 CFR §54.706(a). Interstate telecommunications include, but are not limited to, (i) cellular telephone and paging services, (ii) mobile radio services, (iii) operator services; (iv) personal communications services (PCS), (v) access to interexchange service; (vi) special access service; (vii) WATS, (viii) toll-free service, (ix) 900 service; (x) message telephone service (MTS), (xi) private line service, (xii) telex, (xiii) telegraph, (xiv) video services; (xv) satellite service; (xvi) resale of interstate services, and (xvii) payphone services. *Id.*

defined as the “transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”³

Companies that provide “information services,” however, are not required to contribute to the USF.⁴ “Information service” is defined as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.”⁵

In a report before Congress (*i.e.*, the Universal Service Report),⁶ the FCC distinguished two types of IP telephony: (i) computer-to-computer telephony, and (ii) telephone-to-telephone telephony. With regard to the first type of IP telephony (*i.e.*, computer-to-computer), the FCC stated that the “[i]nternet service provider does not appear to be ‘providing’ telecommunications to its subscribers.”⁷ Recently, the U.S. District Court for the District of Minnesota also held that a telecommunications company that derived all of its revenue from computer-to-computer VOIP telephony was providing “information services” rather than “telecommunications services” and therefore was not subject to Minnesota laws that regulate telephone companies.⁸

In regard to the second type of IP telephony (*i.e.*, phone-to-phone), the FCC stated that it “appears to present a different case.”⁹ The FCC defined “phone-to-phone” IP telephony as meeting four conditions: (i) it holds itself out as providing voice telephony or facsimile transmission service; (ii) it does not require the customer to use customer premises equipment (CPE) different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (iii) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (iv) it transmits customer information without net change in form or content.¹⁰

Based on this definition, the FCC stated that “the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them ‘information services’ within the meaning of the statute, and instead bear the characteristics of ‘telecommunications services’ ” Nevertheless, the FCC stated that “[w]e do not believe, however, that it is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. As stated above, we use in this analysis a tentative definition of

³ 47 USC §153(43)

⁴ 133 FCC Rcd. ¶43, at 11523

⁵ 47 USC §153(20)

⁶ 133 FCC Rcd. 11501

⁷ 133 FCC Rcd. ¶87, at 11543.

⁸ *Vonage Holdings Corporation, v The Minnesota Public Utilities Commission*, 2003 U.S. Dist LEXIS 18451

⁹ 133 FCC Rcd. ¶88, at 11543

¹⁰ *Id*

'phone-to-phone' IP telephony. Because of the wide range of services that can be provided using packetized voice and innovative CPE, we will need, before making definitive pronouncements, to consider whether our tentative definition of phone-to-phone IP telephony accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in technology. We defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible."

The FCC then stated that "[i]n upcoming proceedings with the more focused records, we undoubtedly will be addressing the regulatory status of various specific forms of IP telephony, including the regulatory requirements to which phone-to-phone providers may be subject if we were to conclude that they are 'telecommunications carriers.' The Act and the Commission's rules impose various requirements on providers of telecommunications, including contributing to universal service mechanisms, paying interstate access charges, and filing interstate tariffs. We note that, to the extent we conclude that certain forms of phone-to-phone IP telephony service are 'telecommunications services,' and to the extent the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers, we may find it reasonable that they pay similar access charges. On the other hand, we likely will face difficult and contested issues relating to the assessment of access charges on these providers...We intend to examine these issues more closely based on the more complete records developed in future proceedings."¹¹

Finally, the FCC concluded that "[w]ith regard to universal service contributions, to the extent we conclude that certain forms of phone-to-phone IP telephony are interstate 'telecommunications,' and to the extent that providers of such services are offering those services directly to the public for a fee, those providers would be 'telecommunications carriers.' Accordingly, those providers would fall within section 254(d)'s mandatory requirement to contribute to universal service mechanisms."

III. Application of Law to Radiant.

In order for Radiant to be required to contribute to the USF it must be providing interstate "telecommunications" to the public. If, on the other hand, Radiant is providing "information services" it should not be required to contribute to the USF.

As noted above, Radiant derives all or substantially all of its revenues from providing VOIP services (*i.e.*, IP telephony). Of the two main types of IP telephony, Radiant appears to provide phone-to-phone IP telephony. Namely, (i) it holds itself out as providing voice telephony or facsimile transmission service; (ii) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (iii) it allows the customer to call telephone numbers assigned in accordance with the North

¹¹ 133 FCC Rcd ¶91, at 11545

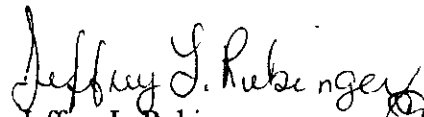
American Numbering Plan, and associated international agreements; and (iv) it transmits customer information without net change in form or content.

While the FCC has stated that phone-to-phone IP telephony "lacks the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunications services,'" the FCC also stated that it was not "appropriate to make any definitive pronouncements in the absence of a more complete records focused on individual service offerings." In other words, no decision has been made as of yet regarding whether phone-to-phone IP telephony constitutes "telecommunication services" or "information services," and thus, are part of the USF ¹²

Given that the law in this area continues to evolve and no "definitive pronouncements" have been issued regarding whether companies, such as Radiant, are required to contribute to the USF, we are appealing the determination set forth in the attached Decision issued by the USAC and the initial determination issued by the FCC, finding Radiant liable for unpaid USF contributions.

If you need any additional information, please do not hesitate to contact me at (954) 985-4181.

Very truly yours,


Jeffrey L. Rubinger
For the Firm

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¹² It is also our understanding that the FCC is currently considering a petition from AT&T to declare that AT&T's phone-to-phone IP telephony services are exempt from interstate access charges on long-distance phone calls

Exhibit A





Universal Service Administrative Company

Administrator's Decision

December 19, 2003

BY FEDERAL EXPRESS

Jeffrey L. Rubinger
Becker & Poliakoff, P.A.
3111 Stirling Road
Ft. Lauderdale, Florida 33312-6525

Re: Radiant Telecom, Inc. (Filer ID 822268)
Request for Decision of the Universal Service Administrative Company

Dear Mr. Rubinger:

The Universal Service Administrative Company (USAC) has completed its evaluation of the Letter of Appeal on behalf of Radiant Telecom, Inc. (Radiant) dated October 30, 2003, and subsequent letter dated November 20, 2003. Although styled a "Letter of Appeal," USAC construes these letters together as a Request for Decision (Request).

Background:

In accordance with Federal Communications Commission (FCC) rules and regulations, Radiant reported its revenue from the provision of telecommunications services on Universal Service Worksheet FCC Form 499-Q (Form 499-Q) that were due in May 2002, August 2002, November 2002, February 2003, August 2003, and November 2003, respectively. USAC relied on the revenue reported by Radiant in order to calculate and invoice Radiant for its required Federal Universal Service Fund (USF) contributions. Radiant asserts in its Request that "it derives all or substantially all of its revenues from voice-over IP telephony."¹ Radiant claims that the FCC has not determined whether or what types of voice-over IP telephony service (VOIP) are telecommunications services and that, therefore, Radiant is not subject to the USF contribution requirement. Radiant seeks to withdraw all of its previously filed Forms 499 and to have its previously paid USF charges reversed.

¹ Radiant indicates that the type of VOIP services it offers are commonly known as "phone-to-phone" IP Telephony.

Discussion:

FCC regulations in force during the period at issue required carriers to file a Universal Service Worksheet FCC Form 499-Q quarterly and a Universal Service Worksheet FCC Form 499-A (Form 499-A) annually and required USAC to bill contributors based on reported revenues. *See generally* 47 C.F.R. Part 54.

Radiant did not file the Form 499-A that was due in April 2003 reporting 2002 annual revenue. However, Radiant reported revenue from the provision of telecommunications services on the Forms 499-Q that it submitted, beginning in May 2002. Radiant now asserts that "it derives all or substantially all of its revenues from voice-over IP telephony" and that such services are not "telecommunications services" for the purposes of USF assessment. In its Request, Radiant takes the position that the FCC has explicitly deferred deciding whether VOIP services should be considered telecommunications services and that, until the FCC takes definitive action, Radiant's VOIP services are exempt from USF assessment.

USAC does not have authority to determine whether VOIP services generally are telecommunications services for the purposes of USF assessment or whether Radiant's specific type of phone-to-phone VOIP services are telecommunications services. Furthermore, USAC does not have the authority to reverse Radiant's billings or to reclassify Radiant's revenue as non-telecommunications revenue.²

Accordingly, and for these reasons, Radiant's request that USAC reverse Radiant's previous USF assessments and allow Radiant to withdraw its previously filed Form 499s is denied.

If you disagree with USAC's decision, you may file an appeal with the FCC. Your appeal must be **POSTMARKED** within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via the United States Postal Service, you should direct the appeal to:

Federal Communications Commission
Office of the Secretary
445 – 12th Street, SW
Room TW-A325
Washington, DC 20554

² Moreover, as USAC has explained to Mr. Rubinger, attorney for Radiant, in the event that Radiant simply stops filing Forms 499, USAC, as current procedures require, will continue to assess and invoice Radiant based upon estimated revenues derived from Radiant's previous filings.

Jeffrey L. Rubinger
Becker & Poliakoff, P.A.
December 19, 2003
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Documents sent by Federal Express or any other express mail should use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8:00 A.M. – 5:30 P.M. ET)

For hand-delivered or messenger-delivered items, use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002
(8:00 A.M. – 7:00 P.M.)

For security purposes, hand-delivered or messenger-delivered documents will not be accepted if they are enclosed in an envelope. Any envelopes must be disposed of before entering the building. Hand deliveries must be held together with rubber bands or fasteners.

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are received at any time before 12:00 A.M. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 A.M.

Please be sure to refer to CC Docket No. 96-45 on all communication with the FCC. The appeal transmission must also provide your company's name and Filer ID, plus necessary contact information, including the name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is by ECFS, please include a copy of the letter being appealed.

Sincerely,

USAC

Universal Service Administrative Company

Jeffrey L. Rubinger
Becker & Poliakoff, P.A.
December 19, 2003
Page 4 of 4

cc: Diane Law Hsu, FCC Wireline Competition Bureau
James Shook, FCC Enforcement Bureau

Exhibit B





Federal Communications Commission
Washington, D.C. 20554

September 6, 2003

Radiant Telecom, Inc.
1020 NW 163 Dr.
Miami, FL 33169
Attn: Korhan Aydin

**RE: IMPORTANT INFORMATION DO NOT DISCARD -FINAL DEMAND AND
NOTICE OF DEBT TRANSFER**

Radiant Telecom, Inc
0007-2523-07
03US000028

The Universal Service Administrative Company (USAC) notified the entity referenced above (You or Debtor) previously and provided other correspondence concerning a Debt due and payable to the federal Universal Service Fund (USF) (a debt owed to the United States). The Debt results from Debtor's non-payment of USF contributions. Because Debtor failed to pay this Debt and the accrued administrative charges, it has been referred to the Federal Communications Commission (Commission or FCC) for further collection effort. The Commission has determined that the outstanding Debt, including presently accrued administrative charges owed to the USF is \$ 1,662,366.18 to date. This Notice is a Demand for payment to be remitted no later than 30 days from the date of this Notice.

**THE FOLLOWING PROVISIONS PROVIDE IMPORTANT INFORMATION AND A
DESCRIPTION OF LEGAL RIGHTS AND OBLIGATIONS**

1. Debtor is cautioned that failure to remit the demanded payment on or before the Last Due Date will result in further sanctions, including, but not limited to, the initiation of proceedings to recover the outstanding debt, together with any applicable administrative charges, penalties, and interest pursuant to the provisions of the Debt Collection Act of 1982 (Public Law 97-365) and the Debt Collection Improvement Act of 1996 (Public Law 104-134), as amended (the DCIA), as set forth below.

2. If we do not receive full payment of the outstanding Debt plus accrued administrative charges within 30 days of the date of this letter (Last Due Date), pursuant to the DCIA, You may incur additional charges and costs, and we will transfer the Debt to the United States Department of Treasury (Treasury) or the United States Department of Justice for debt collection. The FCC has determined that the funds are owed to the United States pursuant to the provisions of 31 U.S.C. § 3701 and 47 U.S.C. § 254. Because the unpaid amount is a debt owed to the United States, we are required by the DCIA to impose interest, processing charges, and penalties (31 U.S.C. § 3717(e)), and to inform You what may happen if You do not pay the full outstanding debt. Under the DCIA, the United States will charge interest from the date of this notice (Demand Date), you will be required

to pay the administrative costs of processing and handling a delinquent debt to date, as well as the administrative costs as set by the Treasury (currently 18% of the debt), and You will be charged an additional penalty of 6% a year for any part of the debt that is more than 90 days past due. Interest on the outstanding debt (DCIA Interest) will be assessed at the published investment rate for the Treasury tax and loan accounts (Treasury Current Value of Funds Rate). However, if You pay the full amount of the outstanding Debt and associated administrative costs and penalties within 30 days of the Demand Date, the DCIA Interest will be waived. These requirements are set out at 31 U.S.C. § 3717.

3. When we transfer the Debt (to the Treasury), You may be subject to other administrative proceedings. Your failure to pay the Debt may be reported to credit bureaus (see 31 U.S.C. § 3711(e)), the Debt will be considered for administrative offset (see 31 U.S.C. § 3716), the Debt may be further transferred to collection agencies (see 31 U.S.C. §§ 3711 & 3718), and also the Debt may be referred to the United States Department of Justice or agency counsel for litigation. In that situation, You may be subject to additional administrative costs that result from the litigation. Moreover, pursuant to 31 U.S.C. § 3720B, a person owing an outstanding nontax debt that is in delinquent status shall not be eligible for Federal financial assistance. You should be aware that the discharge of any portion of the debt may be reported to the Internal Revenue Service as potential taxable income.

Rights of Inspection, Review, and Repayment Agreement

4. You (through Your previously designated authorized representative) have a right to inspect and copy the invoices and other records that are pertinent to Your Debt, and You may request that we review the records pertaining to the Debt and You may, in connection with that request and review, present evidence that all or part of the Debt is not past due or legally enforceable. Finally, You have an opportunity to enter into a written repayment agreement (Promissory Note) to pay the full amount of the Debt. In that case, You must first provide evidence that demonstrates financial inability to pay the debt in one payment. Your claim of financial inability to pay in one payment is subject to verification (see 31 CFR § 901.8), and if Your request is approved for further processing, You will be required to execute a written agreement suitable to the Commission. If You desire to exercise any of these above described rights, You must do so in writing delivered to and received at the address below within 10 (ten) days of the Demand Date. Any required evidence must be submitted at the same time that You submit your request. Failure to provide the written request (and, as appropriate, the required evidence) within the stated time is a waiver of these rights.

5. You may notify us in writing by mail or email to the following addresses:

**Federal Communications Commission
BILL FOR COLLECTION**

FOR INQUIRIES CALL
1-202-418-1995
(Revenue & Receivable Ops Group)

Bill Number		Current Bill Date
03US000028		9/06/03
PAYER FRN#	APPLICANT FRN#	
	0007252307	
Payable to: Federal Communications Commission Send a copy of this bill to: Federal Communications Commission REVENUE & RECEIVABLE OPER P O BOX 358340 PITTSBURGH, PA 15251-8340		
Radiant Telecom, Inc 1020 NW 163 Drive Miami, FL 33169		
Total Amount Due		Due Date
\$1,662,366.18	Total Amount Due Must Be Received By	10/05/03

SPECIAL INSTRUCTIONS (OPTIONAL)

PAYER FCC REGISTRATION NUMBER (FRN) REQUIRED

USAC FINAL DEMAND BILLING ATTN KORHAN AYDIN

FCN' CALL SIGN

PAYER ADDRESS.

Please write your bill number on your remittance
Please attach a copy of this bill to your payment to ensure proper credit

PTC	Quantity	Fee Due
USAC	0	\$1,662,366.18
Total Due		\$1,662,366.18

Payment Method: Check ☐ (Attach)
Credit Card ☐ (Complete Below)

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> MasterCard | <input type="checkbox"/> American Express |
| <input type="checkbox"/> VISA | <input type="checkbox"/> Discover |

Account No

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Expiration

<div>Month</div>	<div>Year</div>
------------------	-----------------

I hereby authorize the FCC to charge my Credit Card for the service(s) / authorization(s) herein described

AUTHORIZED SIGNATURE

DATE

Exhibit C

TO REORDER CALL 954-846-9399



RECYCLED PAPER

